

PETITION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

AO 243 (Rev. 2/95)

UNITED STATES DISTRICT COURT		District DISTRICT OF MASSACHUSETTS
Name of Movant HUGH F. O'NEIL BARNES	Prisoner No. 45896-054	Case No. 99-10078-RCL
Place of Confinement FCI Elkton, P.O. BOX 10 Lisbon, Ohio 44432.		
UNITED STATES OF AMERICA	V. HUGH F. O'NEIL BARNES (name under which convicted)	
MOTION 04 11422 RCL		
<p>1. Name and location of court which entered the judgment of conviction under attack U.S. DISTRICT COURT DISTRICT OF MASSACHUSETTS, --322 U.S. Post Office, 90 Devonshire St., Boston, MA 02109</p> <p>2. Date of judgment of conviction DECEMBER 31, 1999</p> <p>3. Length of sentence 135 MONTHS, 3-YEARS SUPERVISED RELEASE</p> <p>4. Nature of offense involved (all counts) CONSPIRACY TO IMPORT COCAINE --COUNT ONE</p> <p>5. What was your plea? (Check one) (a) Not guilty <input type="checkbox"/> (b) Guilty <input checked="" type="checkbox"/> (c) Nolo contendere <input type="checkbox"/></p> <p>If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details: N/A</p> <p>6. If you pleaded not guilty, what kind of trial did you have? (Check one) (a) Jury <input type="checkbox"/> (b) Judge only <input type="checkbox"/></p> <p style="text-align: right;">MAGISTRATE JUDGE <i>Jen</i></p> <p>7. Did you testify at the trial? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>8. Did you appeal from the judgment of conviction? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p style="text-align: right;">in criminal case Q10</p>		

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9. If you did appeal, answer the following:

(a) Name of court COURT OF APPEALS FOR THE FIRST CIRCUIT

(b) Result JUDGEMENT AND SENTENCE OF DISTRICT COURT AFFIRMED.

(c) Date of result MARCH 3, 2003; and a petition for panel rehearing was filed after.

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes No

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court Not Applicable

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

(5) Result Not Applicable

(6) Date of result _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court N/A

(2) Nature of proceeding _____

(3) Grounds raised _____

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

(5) Result _____

(6) Date of result _____

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes No
(2) Second petition, etc. Yes No (d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

N/A

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting the same.

Caution: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.

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- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (h) Denial of right of appeal.

A. Ground one: COUNSEL'S REPRESENTATION WAS CONSTITUTIONALLY DEFICIENT, AT SENTENCING.

Supporting FACTS (state *briefly* without citing cases or law)

--SEE MEMORANDUM OF LAW ATTACHED--

B. Ground two: COUNSEL DID NOT COHESIVELY THE EVIDENCE INTRODUCED TO SUPPORT THE THE DRUG QUANTITY DETERMINATION.

Supporting FACTS (state *briefly* without citing cases or law)

--SEE ATTACHED MEMORANDUM OF LAW--

C. Ground three: THE GOVERNMENT BREACHED THE PLEA AGREEMENT.

Supporting FACTS (state *briefly* without citing cases or law)

-- SEE MEMORANDUM OF LAW ATTACHED--

D. Ground four: ALL OTHER ISSUES ARE CONTAINED IN THE MEMORANDUM ATTACHED

Supporting FACTS (state *briefly* without citing cases or law) _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: _____

N/A

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?
Yes No

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing BERNARD GROSSBERG

(b) At arraignment and plea SAME AS ABOVE

(c) At trial N/A

(d) At sentencing SAME AS ABOVE

(e) On appeal JUDITH H. MIZER -- 79 STATE STREET, 2nd FLOOR, NEWBURYPORT, MA 01950

(f) In any post-conviction proceeding None

(g) On appeal from any adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes No

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

N/A

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes No

Wherefore, movant prays that the Court grant petitioner relief to which he or she may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

5/16/04
(Date)



Signature of Movant